

DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 03-0445P

**Withholding Tax
For the Calendar Year 2002**

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superceded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

I. **Tax Administration** – Penalty

Authority: IC 6-8.1-10-2.1(d); 45 IAC 15-11-2;

The taxpayer protests the late penalty.

STATEMENT OF FACTS

The late penalty was assessed on the late filing of an annual withholding tax form (WH-3) for the calendar year 2002.

The taxpayer is a company located in Indiana.

I. **Tax Administration** – Penalty

DISCUSSION

The taxpayer argues the late penalty should be waived as the taxpayer received the annual withholding tax form (WH-3) late on March 5, 2003. The due date of the annual withholding tax form is February 28, 2003.

The Department records show the WH-3 was mailed on October 22, 2002. Department policy with regard to a properly mailed billing by the Department states a Department billing is properly mailed if Department records show the billing was mailed to the correct address. Receipt of the billing by the taxpayer is not necessary to prove the taxpayer received the billing. As the Department records show the WH-3 was properly mailed, the taxpayer fails in demonstrating reasonable cause in filing the WH-3 late.

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45 IAC 15-11-2(b) states, "Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer."

The Department finds the taxpayer was inattentive of tax duties. Inattention is negligence and negligence is subject to penalty. As such, the Department finds the penalty proper and denies the penalty protest.

FINDING

The taxpayer's penalty protest is denied.

TB/TG/JMS—040804